



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 10, 1996

Honorable James A. Peace
Hudspeth County Judge
P.O. Box 68
Sierra Blanca, Texas 79851

Commissioner Wayne West
P.O. Box 68
Sierra Blanca, Texas 79851

Commissioner Jim Ed Miller
P.O. Box 68
Sierra Blanca, Texas 79851

Ms. Eva Tarango
County Auditor
P.O. Box 68
Sierra Blanca, Texas 79851

OR96-0014

Dear Lady and Gentlemen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code.¹ Your request was assigned ID# 34831.

Hudspeth County (the "county") received a request for nine categories of documents relating to the establishment of the Texas Low-Level Radioactive Waste Disposal Authority's dump site at the Faskin Ranch and other related information. You

¹We note that Chapter 552 of the Government Code was amended in the most recent legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 1, 1895 Tex. Sess. Law Serv. 5127 (Vernon). However, these amendments apply only to requests received by governmental bodies on or after September 1, 1995. *Id.* § 26, 1995 Tex. Sess. Law Serv. at 5142. Therefore, we do not address the affect of the amendments on requests received on or after September 1, 1995.

claim that most of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.106, 552.109, 552.110, 552.111 of the Government Code, and the informer's privilege incorporated by section 552.101 of the Government Code.

Chapter 552 imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request and the claimed exceptions to disclosure to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

Additionally, section 552.303 of the Government Code requires that a governmental body seeking a decision from the attorney general must submit to this office the specific information requested.² Responsive documents or representative samples of responsive documents are required because "[i]n order to determine whether information is subject to a particular exception, this office ordinarily must review the information." Open Records Decision No. 497 (1988) at 4. On August 8, 1995, we requested copies of the documents sought and your arguments for withholding those documents. To date, we have not received the requested documents or your arguments for withholding the documents.³

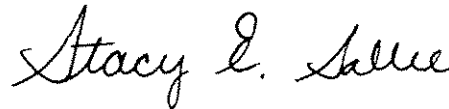
Chapter 552 places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exception you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act and that the information is presumed to be public. Open Records Decision No. 195 (1978).

²We note that this requirement is now set out in section 552.301(b)(3) of the Government Code as a result of substantial amendments to the Open Records Act in the last legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 18, 1995 Tex. Sess. Law Serv. 5127, 5139 (Vernon).

³You request that due to the burden of gathering the requested documents for submission to this office, the county be excused from this requirement. Although this office does not have the authority to waive this statutory requirement, we have previously held that a governmental body may submit representative samples of the requested documents to this office for review. Open Records Decision Nos. 499 (1988), 497 (1988).

Therefore, in the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). We note that the distribution of confidential information is a criminal offense. Gov't Code § 552.352. We have included for your information a list of the types of information that are confidential. This list is intended to be illustrative only and is not an exhaustive list of every type of confidentiality provision. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 34831

Enclosure: Confidentiality list

cc: Mr. Willard "Billy" R. Addington, Jr.
P.O. Box 218
Sierra Blanca, Texas 79851
(w/enclosure)

Mr. Frank J. Guzmán
Kemp, Smith, Duncan & Hammond, P.C.
P.O. Box 2800
El Paso, Texas 79999-2800
(w/enclosure)